

FINDING OF FACT

By
JOHN R. BAKER

2002 MAY -3 PM 2:57
PUBLIC EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF FACTFINDING)
AND BINDING RECOMMENDATIONS)

MARSHALL COUNTY, IOWA)

EMPLOYER,)

and)

PUBLIC, PROFESSIONAL AND)
MAINTENANCE EMPLOYEES, LU 2003,)

EMPLOYEE ORGANIZATION.)

FINDING OF FACT

AND

RECOMMENDATIONS

APPEARANCES

FOR THE EMPLOYER

FOR THE UNION

Rex Ryden, Attorney at Law

Michael Scarrow, Business Representative

STATEMENT OF JURISDICTION

This matter proceeds to Fact Finding pursuant to an independent impasse agreement mutually agreed upon by and between Marshall County, Iowa, a public employer, and Local Union 2003, PPME, a public employee organization. The Fact Finder was selected from a list of Fact Finders furnished to the parties by the Public Employment Relation Board.

A hearing was held on April 24, 2002 commencing at approximately 1:00pm at the Marshall County Courthouse, Marshalltown, Iowa. At hearing the parties were afforded the full and complete opportunity to introduce evidence and frame arguments in support of their respective positions on each item at impasse. Solely upon the evidence in the record and the arguments of the parties at hearing, this binding recommendation is made.

CRITERIA APPLIED IN DRAFTING THIS RECOMMENDATION

The Iowa Public Employment Act does not set forth the criteria that are to be used in the determination of a fact-finding recommendation. The Act does, however, contain the criteria that are to be used by interest arbitrators in the formulation of interest

arbitration awards. Section 22.9 of the Act sets forth the following, in relevant part:

The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

- a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
- b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
- c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
- d. The power of the public employer to levy taxes and appropriate funds of the conduct of its operations.

An interest arbitrator may choose one of three possible positions on an item at impasse. He or she may select the position of the public employer, the public employee organization or the recommendation of the fact finder. It is therefore logical the same criteria in the formulation of a fact-finding recommendation.

BACKGROUND

Marshall County, Iowa (hereinafter "county") is located in central Iowa. For purposes of collective bargaining the County's Secondary Road employees are represented by the Public, Professional and Maintenance Employees, Local Union 2003, International Brotherhood of Painters and Allied Trades, AFL-CIO (hereinafter "Union").

The County and the Union have engaged in collective bargaining since 1979. The record developed at the hearing indicates that the Parties have on several occasions failed to reach a voluntary agreement and have engaged the statutory impasse procedures contained in the Public Employment Relations Act, Chapter 20, Code of Iowa. A comparability group was established during that impasse procedure. At hearing the Parties were unable to agree to an appropriate comparability group. The Union urged the adoption of two groups of counties for purposes of comparability. The first is a grouping of nineteen counties that, for the most part, lie within the first two tiers of counties contiguous to Marshall County. The second grouping urged by the Union for purposes of comparison is a subset of the larger group and is composed of eight counties. The Union argued that these eight counties are comparable because of their commercial and industrial development.

The County urged the adoption of a different grouping of counties. These are the

six counties that are contiguous to Marshall County.

ITEM AT IMPASSE

Three items remain unresolved by the Parties. The first is hours of work; the second is health insurance, and; the third is the amount of the wage increase.

POSITION OF THE PARTIES

Hours of work.

Current language

Article 13 – Hours of Work

The purpose of this Article is intended to define the normal hours of work, and shall not be construed as a guarantee of hours of work per day or days of work per week. Determination of the daily and weekly work schedule shall be made by the Employer

Normal Work Week – Said work week starts at 12:01 Saturday and runs thorough Midnight the following Friday.

Summer Season – The normal work day shall consist of nine (9) hours of work. One-half (1/2) hour, from 12:00 Noon to 12:30 PM, shall be observed as an unpaid lunch period. The normal work week shall consist of forty-five (45) hours, and after forty-five (45) compensated hours, an employee may be sent home and placed in non-pay status for the balance of said work week.

Winter Season – The normal workday shall consist of eight (8) hours of work. One-half (1/2) hour, from 12:00 Noon to 12:30 PM, shall be observed as an unpaid lunch period. The normal work week shall consist of forty (40) hours, and after forty (40) compensated hours, an employee may be sent home and placed in non-pay status for the balance of said work week.

During said summer season, any hours worked in excess of nine(9) hours in a day or forty-five (45) hours in a work week must be assigned and approved of by the Employer. During said winter season, any hours worked in excess of eight (8) hours in a day or forty (40) hours in a work week must be assigned and approved of by the Employer, and said employee can be removed from duty any time after said forty (40) hours in a week are worked or paid for.

Season Duration – The summer season shall commence in April and run for thirty-four consecutive weeks. The winter season shall be the remaining weeks in the consecutive twelve (12) month period.

Rest Periods – The Employer shall grant, with pay, one (1) rest period from 9:15 AM to 9:30 AM in the morning, and one (1) rest period from 2:30 PM to 2:45 PM in the afternoon.

Upon Employer approval, on an individual employee basis, the aforementioned prescribed times and arrangements for lunch and rest periods may be changed.

Travel time from point of origin to site of work and return shall be considered part of the working day. Point of origin for all workers shall be the respective maintenance building to which each employee may be assigned.

Overtime.

Overtime shall be paid for at the rate of time and one-half (1½) the employee's straight time hourly rate for hours worked in excess of eight (8) hours in any one (1) work day. Work preformed on Saturday, Sunday or a recognized

paid holiday will be paid for at time and one-half (1 ½) the employee's straight time hourly rate. Over time shall not be paid more than once for the same hours worked.

Any work performed outside of the normal designated work day hours must have prior approval by supervisory personnel. Each employee performing work at times other than during the normal work day hours must notify a supervisor at the time he/she starts and at the time he/she completes the work.

The Union proposes a redaction of the current language. Specifically, the Union proposes to strike the following:

Article 13 – Hours of Work

The purpose of this Article is intended to define the normal hours of work, ~~and shall not be construed as a guarantee of hours of work per day or days of work per week. Determination of the daily and weekly work schedule shall be made by the Employer~~

Normal Work Week – Said work week starts at 12:01 Saturday and runs thorough Midnight the following Friday.

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Upon Employer approval, on an individual employee basis, the aforementioned prescribed times and arrangements for lunch and rest periods may be changed.

Travel time from point of origin to site of work and return shall be considered part of the working day. Point of origin for all workers shall be the respective maintenance building to which each employee may be assigned.

Overtime.

Overtime shall be paid for at the rate of time and one-half (1½) the employee's straight time hourly rate for hours worked in excess of eight (8) hours

in any one (1) work day. Work performed on Saturday, Sunday or a recognized paid holiday will be paid for at time and one-half (1½) the employee's straight time hourly rate. Over time shall not be paid more than once for the same hours worked.

Any work performed outside of the normal designated work day hours must have prior approval by supervisory personnel. Each employee performing work at times other than during the normal work day hours must notify a supervisor at the time he/she starts and at the time he/she completes the work.

The Union also proposes to add the following language to the instant section:

Employees may elect to receive compensatory time off in lieu of overtime pay at the rate of time and one-half for work performed during the winter season. Employees are allowed to accumulate a maximum of eighty (80) hours. Scheduling compensatory time off will be by mutual agreement between the County and the employee. Compensatory time shall count as time worked for computing overtime.

Finally, to the overtime section of this article, the Union proposes to add language that compensatory time shall count the same as time worked for the purpose of computing overtime pay.

The County proposes the current contract language be retained.

Health insurance.

Current language

Article 19 – Insurance

The Employer agrees to cover each regular full-time employee with group health insurance, which insurance currently is the Alliance Select plan with Blue Cross/Blue Shield sponsored by the Iowa State Association of Counties, a general description of which is attached hereto as Exhibit C. The Employer will pay the full cost of the single policy beginning the first day of the calendar month following the employee's date of hire. If the employee wishes to have family coverage, the employee will pay the full cost of the family coverage less the premium cost for single coverage. After completion of the probationary period the Employer will continue to pay the full cost of the single coverage and, if the employee desires to continue his family coverage, the employee will pay 25% (but not over \$90.00 per month during the first year of his Agreement and not over \$100.00 per month during the second year of his Agreement) toward the difference between the single coverage rate and the family coverage rate and the Employer will pay the balance of each difference, beginning with the first day of the calendar month following completion of the probationary period. If a regular full-time probationary employee wishes to have family coverage prior to the first day of the month following completion of the probationary period, the employee will pay the entire premium for family coverage, less the premium for single coverage, and receive family coverage beginning the first day of the calendar month following the date of hire.

The Union proposes the following language:

The Employer agrees to cover each regular full-time employee with group health insurance which shall be a \$100/\$200 deductible with a \$500/\$1000 maximum out of pocket and is a 90/10 co-pay plan. This plan shall also include a \$5/\$10 drug card. This plan shall be substantially equal to the plan that is now in effect and a general description of which is attached hereto as Exhibit C. The employer will pay the full cost of the single policy beginning the first day of the calendar month following the employee's date-of-hire. If the employee wishes to have family coverage, the employee will pay the full cost of the family coverage less the premium for single coverage. After completion of the probationary period, the Employer will continue to pay the full cost of single coverage and, if the employee desires to continue his family coverage, the employee will pay 25% (but not over \$100.00 per month) toward the difference between the single coverage rate and the family coverage rate and the Employer will pay the balance of such difference, beginning with the first day of the calendar month following completion of the probationary period. If a regular full-time probationary employee wishes to have family coverage prior to the first day of the month following completion of the probationary period, the employee will pay the entire premium for family coverage, less the premium for single coverage, and receive family coverage beginning the first day of the calendar month following the date of hire.

The County proposes to provide an insurance plan with the following provisions.

\$250/\$500 Deductible

The cost of the employee portion would be \$99 per month to the employee and \$338 per month for the County. If an employee elects the family coverage provision the cost would be \$487 per month for the employee and \$608 per month for the County.

Wage increase.

The Union proposes a \$1.25 per hour wage increase.

The County proposes a \$.29 per hour wage increase.

DISCUSSION AND RECOMMENDATION

Both the County and the Union were well represented by at the Hearing on this matter. Indeed, both Mr. Scarrow and Mr. Ryden provided well reasoned and relevant exhibits in support of their respective positions.

It is apparent from the presentations of the County and the Union that the parties have made every reasonable effort to reach a voluntary agreement on the items at impasse. It is also apparent that these impasses have engendered a great deal of strongly held feelings.

Hours of work.

In support of its proposal to modify the Hours of work article and to add a provision for compensatory time in lieu of overtime the Union noted that this provision is unique to the County. The Union provided the relevant language from the collective bargaining agreements from over a dozen other collective bargaining agreements within it proposed comparability grouping demonstrating that no other contract has this schema for the work day or work week. These contracts do not allow for sending employees home after reaching the regular number of straight time hours. Rather, they provide for the payment of overtime.

The Union also noted that twelve of the counties in their suggested comparability grouping provide the employee the option of opting for accumulating compensatory time in lieu of overtime pay. The average maximum number of hours of compensatory time that may be accumulated, where such provision is extant, is 82.75 hours. The Union proposal would allow for the accumulation of 80 hours of overtime.

The Union also argued that the current practice works a burden on the employees by requiring time off at times not of their choosing. According to the Union, when employees are sent home after working the requisite number of straight time hours, their families are often not at home during those days. It would be more equitable to allow the employees to work beyond the regular work week and accumulate compensatory time that they could use at time more amenable to them.

The Union also noted that this provision was impressed into the collective bargaining agreement by an arbitrator and not through negotiations. Further, the Union pointed to the Fact-Finding Recommendation of Mr. Habbo Fokkena who, while retaining the existing provisions, urged the parties to consider several alternatives and to engage in further negotiation.

The County argued that this provision has been in the collective bargaining agreement since 1980 when Arbitrator James A. Sjobakken authored the instant language in an interest arbitration award. The County noted the Arbitrator Sjobakken "ruled in favor of the union with respect to the length of the probationary period, check-off of union dues and wages." According to the County, this language remained unchallenged for twenty years. In the negotiations to establish the 1999-2000 collective bargaining agreement the Union proposed to change the language, the matter proceeded to a fact-finding hearing and the recommendation was for the current language to be retained.

The arguments of both the County and the Union are well reasoned and impressive. However, the record demonstrates that the language is of long history and duration. Arbitrator Sjobakken stuck a quid pro quo in providing for his schema with respect to hours of work. Thus, this impasse item cannot be viewed in isolation from those other provisions that were adjudicated.

Most certainly with the passage of time it is appropriate to revisit certain items and to propose modifications and revision of long established language. However, such changes must carefully consider the origins of the language sought to be altered. Here, there is evidence of a balancing of the interests of the Union and the interests of the county. This balance resulted in the Union obtaining certain provisions and the County obtaining certain provisions. Mr. Fokkena recognized this fact when he wrote, "As a Fact Finder, I see no compelling reason to change one part of a past compromise without addressing other parts of the same deal. Doing so would not be fair." This reasoning is persuasive.

The proposal of the Union with respect to hours of work is not recommended.

Health insurance.

The impasse over the health coverage provided and the contribution paid by the County is without doubt the most contentious item of disagreement between the Parties. The Union has proposes no change in the coverage or contribution of the employees toward the cost of either a single insurance premium or the family insurance premium.

The County proposes to change not only the coverage provided by health insurance but also the amount of the employee contributions toward the cost of the single and family premiums. In support of this proposal the County noted the increase in the cost of health insurance beginning in 1999. The costs are as follows:

1999	\$143,789
2000	\$154,633
2001	\$223,757
2002	\$286,312
2003	Projected increase, cost \$308,760

In 2000 the cost increased \$10,845 over the cost of insurance in the preceding year. The subsequent yearly increases were \$69,124 in 2001 and \$62,555 in 2002. The projected cost increase for the year 2003 is \$22,448. The County also noted the number

of single and family policies is not materially different from year to year. According to the County the cost has increased by approximately \$1.94 per hour for each employee.

The County also noted that its revenue for funding all costs of for this department have not kept pace with the increases that it is experiencing. Further, the County argued that it appears that funding will remain at existing levels rather than increase with the increasing costs of the County.

The Union argued that the reason for the increase in the cost of the health insurance was the County's unilateral decision to move to a self funded health insurance program. According to the Union, this was an ill advised decision that has resulted in unnecessary premium increases and it is unfair to require the employees to bear the burden of the County's poor decision.

Assuming arguendo that the county made a poor decision in choosing to self fund the health insurance does not change the fact that the cost of health insurance has risen dramatically. It is an undisputed fact that the cost of the health insurance will increase next year and it is probable that additional increases will be seen in the future.

The County in its Exhibit 2 stated, " The County cannot and should not be expected to absorb these extraordinary increases by itself. Employees must share in those increases if they are unwilling to assume the risks of a plan with lower level of benefits." In essence, the County proposes to shift a greater portion of the health insurance costs to the employees. While some shifting of cost may be appropriate, that proposed by the County is excessive. The County proposes that an employee pay \$99.00 for single coverage and \$487.00 for family coverage. Currently, employees are provided with single coverage at no cost to them and they contribute \$100.00 toward the cost of family coverage. The County's proposal would result in an employee contributing an additional \$2.51 per hour toward the cost of insurance.

The Union proposes that the County provide single health insurance coverage at no cost to the employee. The Union noted that a majority of the counties in their larger comparability grouping provide single coverage at no cost to the employee. Further, the Union noted that the County currently provides single health insurance coverage at no cost to the employee.

The Union also proposes no change in the amount contributed by an employee toward the cost of family health insurance coverage.

It is recommended that that the County continues to provide single coverage

health insurance at no cost to the employee. It is further recommended that the insurance provided by the County contain coverage consistent with those listed in "Plan 4" as set forth in County Exhibit number 4.

It is further recommended that the contribution of those employees who have selected family health insurance coverage be increased to \$200.00.

Wage increase.

The Union has proposed a \$1.25 per hour wage increase, which is an 8.6% increase. The County has proposed a \$.29 per hour wage increase, which is a 2% increase.

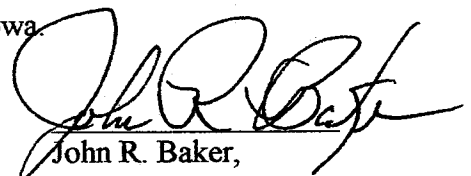
Both the Union and the County have recognized that the increase in the cost of the health insurance affects the increase in wages. The County refers to this in its Exhibit 5 and the Union acknowledges this in its calculation of disposable income set forth in its Exhibit 10.

The average wage increase for the larger comparability group proposed by the Union was \$.51 per hour and for the small of the two groupings, the increase was \$.54 per hour. The County noted that it compares favorable with the counties within it proposed comparability grouping.

Deference must be given to the cost increases the County has experienced and will experience in the coming year. Deference must also be paid to the needs of the employees for an adequate increase in wages while at the same time maintaining an affordable health insurance contribution.

It is recommended that wages be increased by \$.50 per hour.

Dated this 29th day of April 2002 at Minburn, Iowa.


John R. Baker,
Attorney at Law

CERTIFICATE OF SERVICE

I certify that on the 30th Day of April, 2002 I served the foregoing Report of Fact-Finder upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

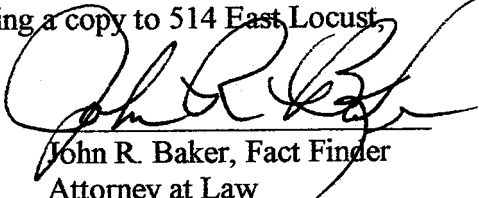
FOR THE PUBLIC EMPLOYER

Mr. Rex Ryden
Attorney at Law
Cartwright, Druker & Ryden
PO Box 496
Marshalltown, IA 50158

FOR THE PUBLIC EMPLOYEE ORGANIZATION

Mr. Michael Scarrow
P.O. Box 113
Mason City, IA 50402-0113

I further certify that on the 30th day of April, 2002 I submitted this Report of Fact Finder to the Iowa Public Employment Relations Board by mailing a copy to 514 East Locust, Suite 202, Des Moines, IA 50309



John R. Baker, Fact Finder
Attorney at Law